

United States
Circuit Court of Appeals

For the Ninth Circuit. 13

DONG AH LON,

Appellant,

vs.

MARIE A. PROCTOR, Commissioner of Immigration and Naturalization at the Port of Seattle, Washington,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

DEC 1 1953

PAUL P. O'BRIEN,

CLERK



United States
Circuit Court of Appeals

For the Ninth Circuit.

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Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL:

KARL P. HEIDEMANN, Esq.,

Attorney at Law,

816 Central Building,

Seattle, Washington,

Attorney for Appellant.

J. CHARLES DENNIS, Esq.,

U. S. District Attorney,

222 Post Office Building,

Seattle, Washington,

GERALD SHUCKLIN, Esq.,

Assistant U. S. District Attorney,

222 Post Office Building,

Seattle, Washington,

Attorneys for Appellee. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 53

In the Matter of the Application of
Dong Ah Lon,
For Writ of Habeas Corpus.

PETITION FOR WRIT.

To the Honorable John C. Bowen, Judge of the
Above Court:

Comes now your petitioner, Dong Ah Lon, and
by this petition respectfully shows:

I.

That she is a citizen of the United States, being
the foreign born daughter of a native born citizen
of the United States.

II.

That in August (9th), 1938, your petitioner
arrived at the port of Seattle from China, and then
and there applied to the District Commissioner of
Immigration at said port for admission to the
United States, and at a hearing on said application
by and before a Board of Special Inquiry con-
vened for said purpose, applicant presented testi-
mony and evidence tending to show, and proving
her citizenship as aforesaid.

III.

That notwithstanding said facts, and the testi-
mony and evidence before said Board proving the

United States citizenship of your petitioner as aforesaid, and notwithstanding that said testimony and evidence stood and now stands uncontroverted by any material testimony or evidence, said Board of Special Inquiry and said District Commissioner did on or about September 9th, 1938, deny applicant's right of admission to the United States and did refuse to admit her, [2] and made an order that she be rejected and deported to China, said order of denial and rejection and of deportation being made without any material evidence to support it, and based wholly and solely on the ground of alleged discrepancies in the testimony, which alleged discrepancies said Board conceded are not of great importance.

IV.

That thereafter a Petition for Writ of Habeas Corpus was filed and an Order to Show Cause entered, which Petition and Order were thereafter dismissed and a petition for reopening was addressed to the Honorable Secretary of Labor, which petition for reopening was granted and thereafter the matter was again presented to the Hon. Secretary of Labor and the Board of Review and the Hon. Secretary of Labor, on or about March 20, 1939, dismissed said appeal and affirmed said Order so appealed from, such dismissal and affirmance being with full knowledge by said Secretary of the rights of petitioner as aforesaid; said order of the Board of Special Inquiry and District Commis-

sioner and of said Secretary of Labor having been made arbitrarily, capriciously and wrongfully, and constituting a denial to petitioner of a fair and unbiased hearing in said Department; and your petitioner is without remedy except in this Court.

V.

That your petitioner is now detained, confined and restrained of her liberty by the Honorable Marie A. Proctor as District Commissioner of Immigration and Naturalization, at the Immigration Station at the Port of Seattle as aforesaid, within the jurisdiction of this Court, the same being for the pretended and purported reason that notwithstanding the facts above set forth, that petitioner is not entitled to admission [3] into the United States.

VI.

That said confinement and restraint is not under any process issued on any final judgment of a court of competent jurisdiction, nor for contempt of any court, nor upon any warrant issued from any court.

VII.

That your petitioner has deposited with the District Commissioner in charge of said Immigration Station at Seattle the sum of one hundred (\$100.00) Dollars as maintenance charges of your petitioner pending this proceeding.

Wherefore, your petitioner prays that said District Commissioner of Immigration and Naturaliza-

tion be ordered to show cause herein why a Writ of Habeas Corpus be not issued herein, and that upon the hearing on said order to show cause, at a date to be fixed therein, that the issuance of a Writ of Habeas Corpus be directed, and said District Commissioner be commanded therein to have the body of your petitioner before this Court at the court room thereof at a time in said Writ to be fixed, there to do and receive what shall be then and there considered concerning your petitioner together with the time and cause of her detention.

HEIDEMAN & WALTHER

Attorneys for Petitioner.

State of Washington
County of King—ss.

Karl P. Heideman, being first duly sworn on oath deposes and says: That he is the attorney for the above-named petitioner, that he has read the foregoing Petition, knows the contents thereof, and believes the same to be true.

KARL P. HEIDEMAN

Subscribed and sworn to before me this 28th day of October, 1938.

[Seal] GEORGE W. WILLIAMS

Notary Public in and for the State of Washington,
residing at Seattle. [4]

[Endorsed]: Received a copy of the within Petition for Writ this 31 day of Mar. 1939. J. Charles Dennis, Attorney for Respondent.

[Endorsed]: Filed Mar. 31, 1939. [5]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE.

It is made to appear from the petition of Dong Ah Lon herein filed that the said Dong Ah Lon is wrongfully and illegally imprisoned, confined and restrained of her liberty by the Honorable Marie A. Proctor as District Commissioner of Immigration and Naturalization at the United States Immigration Station at Seattle, within the jurisdiction of this Court said petition stating wherein such illegality consists; and it further appearing from said petition that petitioner has deposited with said District Commissioner the sum of one hundred (\$100.00) Dollars as petitioner's maintenance charges pending this hearing; Now, Therefore, it is by the Court

Ordered that said Marie A. Proctor as District Commissioner of Immigration and Naturalization aforesaid show cause before this Court on the 17th day of April, 1939, at the hour of Ten o'clock a. m. of said day, or as soon thereafter as said petition may be heard, why a writ of habeas corpus should not issue herein, and why said petitioner should be further restrained of her liberty; and

Pending the further order of this Court the said District Commissioner be and she is hereby restrained and enjoined from deporting petitioner.

Done in Open Court this 31st day of March, 1939.

JOHN C. BOWEN

Judge

Presented by:

KARL P. HEIDEMAN

Of Counsel for Petitioner.

[Endorsed]: Filed Mar. 31, 1939. [6]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE.

To the Honorable John C. Bowen, Judge.

Comes now the respondent, Marie A. Proctor, as United States Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, and, for answer and return to the Order to Show Cause entered herein, certifies that the said Dong Ah Lon has been detained by this respondent since the time she arrived from China at the Port of Seattle, Washington, to-wit: August 19, 1938, as an alien Chinese person not entitled to admission in the United States under the laws of the United States, pending a decision on her application for admission as a citizen on her claim of being a foreign-born daughter of a deceased citizen of the United States; that, at a hearing before a Board of Special Inquiry at the Seattle Immigration Station the said Dong Ah Lon failed to present satisfactory proof that she was or is a daughter of Dong Toy as claimed, and her application for admission in the United States was denied for that reason and (2) on the additional ground that she is an alien ineligible to citizenship not a member of any of the exempt classes specified in Section 13(c) of the Immigration Act of 1924, (8 U. S. C. A. 213); that the said Dong Ah Lon appealed from the said decision of the Board of Special Inquiry to the Secretary of Labor and thereafter the decision of

the Board of Special Inquiry was affirmed by the Assistant to the Secretary of Labor and the said Dong Ah Lon was ordered returned to China; that since the final decision of the Assistant to the Secretary of Labor, respondent has held, and now holds and detains the said Dong Ah Lon for return to China as an alien Chinese person not entitled to admission into the United States under the laws of the United States, and subject to return to China under the laws of the United States.

The original record of the Secretary of the Department of Labor, No. 55991/818, and all exhibits, both on the hearing before the Board of Special [7] Inquiry at Seattle, Washington, and on the submission of the record on appeal to the Secretary of Labor at Washington, D. C., in the matter of the application of Dong Ah Lon for admission into the United States, are hereto attached and made a part and parcel of this Return as fully and completely as though set *for* in detail.

Wherefore, respondent prays that the petition for a Writ of Habeas Corpus be denied.

MARIE A. PROCTOR

United States of America
Western District of Washington
Northern Division—ss.

Marie A. Proctor, being first duly sworn, on oath deposes and says: That she is the United States

Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, and the respondent named in the foregoing Return; that she has read the foregoing Return, knows the contents thereof and believes the same to be true.

MARIE A. PROCTOR

Subscribed and sworn to before me this 12th day of April, 1939.

[Seal] (s) S. E. HOBAN

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 5, 1939. [8]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 53

In the Matter of the Petition of
Dong Ah Lon
for Writ of Habeas Corpus.

ORDER DENYING WRIT.

This cause having duly come on for hearing before this Court on the 17th day of April, 1939, upon the Return of the United States Commissioner of Immigration and Naturalization to the Order to

Show Cause theretofore entered herein, the respective parties being represented by Karl P. Heide-
man and John F. Walthew for the petitioner and
J. Charles Dennis and Gerald Shucklin, United
States Attorney and Assistant United States Attor-
ney, respectively, for the Respondent, and the Court
being fully advised in the premises, having on the
6th day of July, 1939, directed that the Order to
Show Cause be dismissed:

Now, Therefore, It Is By This Court Ordered,
Adjudged and Decreed that the said Order to Show
Cause be, and the same is hereby dismissed. It Is
Also Further Ordered, Adjudged and Decreed that
the Writ of Habeas Corpus as prayed for be, and
the same is hereby denied: provided, however, that
the petitioner may, within thirty (30) days, file no-
tice of appeal, and, in the event that appeal be
taken, and on condition that the petitioner shall de-
posit with the Commissioner of Immigration and
Naturalization such sum or sums of money as may
be required for said petitioner's maintenance at
the Seattle, Washington, Immigration Station dur-
ing the pendency of said Appeal, deportation shall
be stayed pending the determination of said Appeal
by the United States Circuit Court of Appeals for
the Ninth Circuit, or by the United States Supreme
Court should the cause be taken to that court on
appeal.

Done in open court this 27th day of July, 1939.

JOHN C. BOWEN

United States District Judge

O. K. as to form

Copy received this 18th day of July, 1939.

HEIDEMAN and WALTHER

Attorneys for Petitioner.

Presented by:

GERALD SHUCKLIN

Assistant United States Attorney [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Comes now the petitioner Dong Ah Lon by her attorneys Heideman and Walthew and hereby gives notice of appeal from that certain Order signed, entered and filed on the 27th day of July, 1939, by the above-entitled Court, said order denying petitioner's application for Writ of Habeas Corpus, to the United States Circuit Court of Appeals.

Dated this 24th day of August, 1939.

HEIDEMAN and WALTHER

Attorneys for Petitioner.

Office & Postoffice Address:

816 Central Building,

Seattle, Washington

Seneca 4220

Received a copy of the within Notice of Appeal this 25th day of August, 1939.

J. CHARLES DENNIS

Attorney for Respondent.

[Endorsed]: Filed Aug. 25, 1939. [10]

[Title of District Court and Cause.]

STIPULATION FOR TRANSMISSION OF
RECORD.

It is hereby agreed and stipulated by and between counsel for the petitioner and for the United States Commissioner of Immigration that the certified file and other records of the Department of Labor covering the exclusion and deportation proceedings against Dong Ah Lon, which are filed with the United States Commissioner of Immigration to the order to show cause, may be transmitted with the appellate record in this cause, and may be considered by the United States Circuit Court of Appeals in lieu of certified copies of the said original file and other records of the Department of Labor.

Dated this 24th day of October, 1939.

KARL P. HEIDEMAN

Attys for Appellant

J. CHARLES DENNIS

Attorney for United States Commissioner of Immigration.

[Endorsed]: Filed Oct. 24, 1939. [11]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF RECORDS.

Upon stipulation of counsel, it is by the Court

Ordered, and the Court does hereby order, that the Clerk of the above-entitled Court transmit the appellate record in the said cause, the certified original immigration file, and other records of the Department of Labor, covering and relating to the exclusion and deportation proceedings against Dong Ah Lon, which were filed with and made a part of the return of the United States Commissioner of Immigration to the order to show cause, directly to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in order that the said original immigration file and records may be considered by the Circuit Court of Appeals in lieu of a certified copy of the same.

Done in open court this 24th day of October, 1939.

JOHN C. BOWEN

Judge

Presented by:

KARL P. HEIDEMAN

of Attorneys for Petitioner

816 Central Building

Seattle, Washington

O. K. as to form

GERALD SHUCKLIN

Asst. U. S. Attorney.

[Endorsed]: Filed Oct. 24, 1939. [12]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME
FOR FILING RECORD ON APPEAL AND
DOCKETING THIS CAUSE IN THE CIR-
CUIT COURT OF APPEALS.

It is hereby stipulated by and between the parties hereto that the time for filing the record on the appeal and for docketing the above cause shall be extended to November 23rd, 1939.

J. CHARLES DENNIS

J. Charles Dennis, Attorney for
United States Commissioner of
Immigration.

GERALD SHUCKLIN

Gerald Shucklin, Assistant U. S.
Attorney, Attorneys for Appel-
lee.

KARL P. HEIDEMAN

of Attorneys for Appellant

[Endorsed]: Filed Oct. 24, 1939 [13]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND FOR DOCK-
ETING CAUSE IN CIRCUIT COURT OF
APPEALS.

This matter having come on to be heard before this Court upon the stipulation of the parties here-

to by their respective counsel for the extension of time for filing the record on the appeal and docketing the above cause in the Circuit Court of Appeals and the stipulation being on file herein and the Court being fully advised in the premises, Now, Therefore, It is hereby

Ordered that the time for filing the record on appeal in this cause and docketing the above action in the Circuit Court of Appeals is hereby extended to November 23rd, 1939.

Done in open court this 24th day of October, 1939.

JOHN C. BOWEN

Judge

Presented by:

KARL P. HEIDEMAN

of Attorneys for Appellant.

O. K. as to form:

GERALD SHUCKLIN

Assistant United States Attorney, of
Attorneys for Appellee.

[Endorsed]: Filed Oct. 24, 1939. [14]

[Title of District Court and Cause.]

PRAECIPE.

To the Clerk of Said Court:

Sir:

Please issue copies of papers for transcript on appeal, as follows:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Return to order to show cause.
4. Order denying writ.
5. Notice of appeal.
6. Stipulation for transmission of record.
7. Order for Transmission of records.
8. Stipulation for extension of time for filing record on appeal and docketing this cause in the Circuit Court of Appeals.
9. Order extending time for filing record on appeal and for docketing cause in the Circuit Court of Appeals.
10. This praecipe. [15]

HEIDEMAN & WALTHER

Attorneys for Appellant

Copy Received October 25, 1939.

J. CHARLES DENNIS

United States Attorney,
Attorney for Appellee.

[Endorsed]: Filed Oct. 25, 1939. [16]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO ORIGINAL DEPARTMENT OF LABOR RECORDS.

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington,

do hereby certify that I enclose herewith the original Department of Labor Records filed in the above entitled cause, which, pursuant to order of court dated October 24, 1939, are required to be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit as part of the appellate record herein, in lieu of a certified copy of same.

In witness whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 1st day of November, 1939.

[Seal]

ELMER DOVER,

Clerk,

United States District Court for the
Western District of Washington.

By R. B. ALLEN,

Deputy. [17]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD.

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 18, inclusive, if a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled

cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of the said District Court at Seattle, and that the same constitute the record on appeal herein from the Order Denying Petition for Writ of Habeas Corpus of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 26 folios at five cents	\$1.30
Appeal Fee (Sec. 5 of Act)	
Certificate of Clerk to Transcript of Record	.50
Certificate of Clerk to Original Records	.50
	<hr/>
Total:	2.30

I hereby certify that the above cost for preparing and certifying the record, amounting to \$2.30, has been paid to me by the attorney for the appellant.

In Witness whereof I set my hand and affix the

seal of the said District Court, at Seattle, this 1st day of November, 1939.

[Seal]

ELMER DOVER,

Clerk,

United States District Court,

Western District of Washington

By R. B. ALLEN,

Deputy. [18]

[Endorsed]: No. 9355. United States Circuit Court of Appeals for the Ninth Circuit. Dong Ah Lon, Appellant, vs. Marie A. Proctor, Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed Nov. 4, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 9355

DONG AH LON

Appellant

vs.

MARIE A. PROCTOR, as Commissioner of Immi-
gration and Naturalization for the Port of
Seattle, Washington,

Appellee.

SPECIFICATION OF ERRORS RELIED
UPON.

Now comes the appellant, Dong Ah Lon, through her attorneys Heideman and Walthew, and sets forth the errors she claims the District Court of the United States for the Western District of Washington, Northern Division, committed in denying her petition for a writ of habeas corpus, as follows:

I.

That the court erred in not granting the writ of habeas corpus and discharging the appellant, Dong Ah Lon, from the custody and control of Marie A. Proctor, Commissioner of Immigration and Naturalization at the Port of Seattle, State of Washington:

II.

That the court erred in not holding that the evidence adduced before the immigration authorities

was insufficient, in law, to justify the conclusion of the immigration authorities that the appellant was not a citizen of the United States:

III.

That the court erred in not holding that the appellant was a citizen of the United States and a Chinese person lawfully entitled to remain in the United States:

IV.

That the court erred in not holding that the immigration authorities acted unfairly and unreasonably in giving probative value to matters and things occurring outside of the regular hearing and not presented at any regular hearing as legal or competent evidence, or according petitioner, or her counsel, any opportunity of cross-examination or direct examination of any and all of the witnesses or of examination of appellant by counsel of appellant and in not allowing appellant to be represented by counsel when witnesses were examined, and in not allowing appellant to have counsel or a friend present at the time of her hearing:

V.

That the court erred in not holding that the appellant had met the burden of proof to establish her American citizenship:

Dated at Seattle, Washington, October 25, 1939.

HEIDEMAN and WALTHER

Attorney for Appellant

Due service of copy of the foregoing Specification of Errors Relied Upon, hereby admitted this day of October, 1939.

Received a copy of the within Specifications this 25th day of Oct. 1939.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Nov. 4, 1939. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED.

To the Clerk of the above entitled Court:

The Appellant in the above entitled matter respectfully designates that all of the record be printed on the appeal in the above entitled matter:

Dated at Seattle, Washington, October 25, 1939.

HEIDEMAN and WALTHER

Attorneys for Appellant

Received a copy of the within Designation this 25th day of Oct. 1939.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Nov. 4, 1939. Paul P. O'Brien, Clerk.